

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

Cellco Partnership d/b/a Verizon Wireless and)
T-Mobile License LLC Seek Consent to the)
Assignment of Advanced Wireless Service)
Licenses)
_____)

WT Docket No. 12-175

To: The Secretary

REPLY TO JOINT OPPOSITION

The Diogenes Telecommunications Project (Diogenes) files this Reply to the Joint Opposition of Verizon Wireless and T-Mobile (Applicants). The Petition to Deny filed by Diogenes in this proceeding raised substantial questions concerning the qualifications of Verizon Wireless as a Commission licensee based on the company's flagrant and prolonged imposition of phony \$1.99 data charges on millions of its customers over approximately three years and its false statements to the Commission denying that it was engaging in this practice. The thrust of the Petition to Deny is that, substantial questions having been raised, the Commission is obligated to conduct a hearing into the qualifications of Verizon Wireless and to order appropriate administrative sanctions up to denial of the applications and revocation of its licenses.

The Joint Opposition treats grant of the applications as a foregone conclusion, ignoring the long-standing Commission requirement that the Applicants must be found to be qualified to hold Commission licenses as a prerequisite to grant of their applications.¹

In a single paragraph the Joint Opposition seeks to brush off the qualification issue, making two points.² As a threshold matter, say Applicants, “the petitioner lacks standing because it fails to show that denying the Applications would prevent or redress any ‘harm’ it alleges.” The harm alleged in the Petition to Deny, however, is the future harm to Verizon Wireless customers if the company is allowed to commit such egregious wrongdoing and suffer no tarnishing of its character as a Commission licensee. The Commission repeatedly cracks down on small broadcasters for making material misrepresentations to the Commission and otherwise violating the rules, yet turns a blind eye when Verizon Wireless knowingly harms 15 million of its customers, refuses to take seriously thousands of customer complaints for years, and tells the Commission that nothing is wrong when the agency finally gets around to looking into the matter.³

Letting Verizon off the hook with a consent decree in which it admits no wrongdoing and agrees to make refunds and a “voluntary” payment to the United States simply invites Verizon to

¹ See, *Jefferson Radio Co. v. FCC*, 340 F.2d 781,783 (D.C. Cir. 1964) (“It is the recognized policy of the Commission that assignment of a broadcast authorization will not be considered until the Commission has determined that the assignor has not forfeited the authorization.”). The FCC describes the “Jefferson Radio” policy as a “long-held Commission policy” under which “a transfer or assignment application cannot be granted when there are ‘unresolved issues’ concerning the seller’s basic qualifications.” The policy “applies to issues that, if proved, could result in the loss of operating authority or denial of a pending application.” In *re* Application of Mark R. Nalbene, Receiver (Assigner) for Assignment of License of Television Station KFNB (Channel 20), Casper, Wyoming, Memorandum Opinion and Order, 6 F.C.C.R. 7529 ~ 7 (Dec. 12, 1991).

² Joint Opposition at p. 15.

³ Assuming *arguendo*, that Diogenes does lack standing, the Commission should still address the serious issues raised and treat the Petition to Deny as an Informal Objection. 47 C.F.R. § 1.41. Section 1.41 of the Commission’s rules does not require a petitioner to demonstrate standing to file an informal objection. See *Nextel License Holdings 4, Inc.*, Order, 17 FCC Rcd 7028, 7033 (WTB CWD 2002).

exploit its customers with similar schemes in the future, knowing that if it is caught it can buy its way out of the jam without jeopardizing its qualification as a licensee. This is the kind of cost-beneficial, calculated business risk sadly taken in corporate America by smug, powerful companies like Verizon Wireless who adopt business strategies that include defrauding customers with the prospect of increased profitability. Unless the Commission acts to curb such behavior by holding its larger licensees accountable, wireless companies are sure to continue to take advantage of their vulnerable customers who are lost in a sea of billing, technical and service plan complexities. In sum, the likelihood of future harm based on a demonstrated pattern of misconduct confers standing on Diogenes and its members.

The Joint Oppositions' second and final point is that "the Enforcement Bureau thoroughly investigated this same matter and, in adopting a Consent Decree, 'conclude[d] . . . [that it] raises no substantial or material questions of fact as to whether Verizon Wireless possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.' " However, the Consent Decree states at Paragraph 4: "This Consent Decree does not constitute either an adjudication on the merits, or a factual or legal finding or determination regarding any compliance or noncompliance with, or applicability of, the Act or the Rules." While the language cited by the Joint Opposition is a single boilerplate statement without explanation (and indeed is unsupportable based on what has been publicly revealed of the licensee's conduct), it is wholly inconsistent with the foregoing statement in the Consent Decree, and hardly resolves the qualification question.

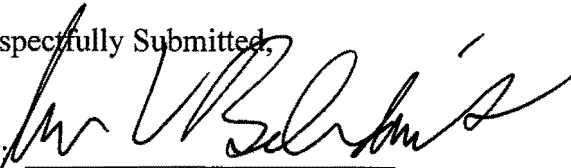
Moreover, it is grossly unfair and prejudicial error for the Commission to withhold the Enforcement Bureau's two Letters of Inquiry and the Responses and Supplemental Responses of Verizon Wireless from public inspection for purposes of this proceeding. Apart from the

pending Application for Review of the Enforcement Bureau's decision on the FOIA request seeking disclosure of these documents and the related Federal Court litigation described in the Petition to Deny, the Commission could safely make the documents available for review to parties in this proceeding under a protective order, as it does routinely where "sensitive" material is involved.

Finally, at Paragraph 7 the Consent Decree expressly states that it is only the Enforcement Bureau that is bound by the decree from taking further action against Verizon Wireless related to the phony \$1.99 data charges. The decree does not limit in any way other Commission Bureaus and Offices or the full Commission from holding a hearing on the nature and extent of rule violations committed by Verizon Wireless in relation to its qualifications as a Commission licensee and whether and what administrative sanctions may be in order.

The Joint Opposition's highhanded dismissal of the Petition to Deny is plainly inadequate. Diogenes has made the requisite showing in its Petition to Deny for Commission disclosure under a protective order of the documents adduced in the Enforcement Bureau's investigation of the phony \$1.99 data charge scheme and for a hearing into the qualifications of Verizon Wireless.

Respectfully Submitted,

By: 

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July 24, 2012

CERTIFICATE OF SERVICE

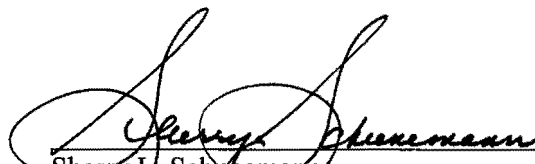
I, Sherry L. Schunemann, a secretary with the law firm of Smithwick & Belendiuk, P.C., do hereby certify that a copy of the foregoing "Reply to Joint Opposition" was served, as specified, this 24th day of July, 2012, to the following:

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